

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ALBERT H. PLEUS,

Plaintiff,

v.

ARP FAMILY FARMS et al.,

Defendants.

Case No. 2:15-cv-02093-RFB-NJK

ORDER

I. INTRODUCTION

Before the Court is Plaintiff's Emergency Motion for Voluntary Dismissal (ECF No. 62) without prejudice based upon Federal Rule of Civil Procedure 41(a). The Court grants the Motion and dismisses this case without prejudice and without ordering fees and costs.

II. DISCUSSION

The Plaintiff has moved for voluntary dismissal pursuant to Rule 41(a)(2) against the remaining Defendants in this action – ARP Family Farms; Ephesians 3:20 Farms; Proverbs 31 Farms, LLC; Circle 191 Farms, LLC; San Tan Agriculture, LLC; and Nathan W. Arp (the “Remaining Defendants”). Rule 41(a)(2) permits a plaintiff to seek voluntary dismissal of an action without prejudice from the district court. Id. “The purpose of the rule is to permit a plaintiff to dismiss an action without prejudice so long as the defendant will not be prejudiced, . . . or

1 unfairly affected by the dismissal.” Stevedoring Services of America v. Armilla Int’l B.V., 889
2 F.2d 919, 921 (9th Cir. 1989).

3
4 The Court finds it appropriate to dismiss this case without prejudice and without requiring
5 the Plaintiff to pay fees and costs. The Court finds that Remaining Defendants will not suffer
6 prejudice and they have not raised a significant issue of prejudice. There has been no discovery
7 in this case beyond initial disclosures and the setting of a discovery schedule. The Remaining
8 Defendants do not oppose dismissal. The Court therefore will dismiss this case without prejudice.

9
10 The Remaining Defendants have requested that the Court ordered the payment of
11 reasonable attorneys fees and costs as a condition precedent to the dismissal of this action. The
12 Remaining Defendants assert that if the action is filed anew, they will have to pay additional
13 attorneys fees and costs for the new action. The Court rejects the Remaining Defendants’ request.
14 First, given the nature of this case, it is not clear to the Court that any new action by Plaintiff would
15 be substantially different than the facts alleged in this case. The Court finds that the Remaining
16 Defendants can and could continue to benefit from the legal counsel they received in this case
17 regarding the causes of action alleged against them. Second, the litigation has not progressed in a
18 significant or substantial manner, so the Court does not find that the Remaining Defendants had to
19 pay for significant legal advice and related costs. While there had been an exchange of initial
20 disclosures, discovery in this case had not actually commenced. Finally, the Court cannot
21 adequately determine whether there is a likelihood or not that the Plaintiff could prevail on its
22 claims against the Remaining Defendants. Considering all of these factors, the Court does not
23 find that the award of fees and costs would be appropriate as a condition precedent to the granting
24 of a voluntary dismissal without prejudice.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. CONCLUSION

IT IS HEREBY ORDERED that Plaintiff's Emergency Motion for Voluntary Dismissal (ECF No. 62) is GRANTED. This case is dismissed against the remaining defendants without prejudice and without an award of fees or costs. The Clerk of Court is ordered to close the case.

DATED this 16th day of January, 2018.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE